IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1404 of 1987

with

SPECIAL CIVIL APPLICATION No 3631 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GMDC EMPLOYEES UNION

Versus

GUJ. MINERAL DEVP.CORPORATION

Appearance:

1. Special Civil Application No. 1404 of 1987
   MR SB VAKIL for Petitioner
   MR KM PATEL for Respondent No. 1
   MS DEVANI for Respondent No. 2
   MR TR MISHRA for Respondent No. 3, 4

2. Special Civil ApplicationNo 3631 of 1990
   MR KM PATEL for Petitioner
   MR SB VAKIL for Respondent No. 1
   RULE SERVED for Respondent No. 2, 3, 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL

Date of decision: 20/06/2000

C.A.V. JUDGEMENT (Per Patel, J.)

Special Civil Application No. 3631 of 1990 is filed by Gujarat Mineral Development Corporation (hereinafter referred to as the Corporation) under Article 226 of the Constitution of India praying for a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the award made by the Presiding Officer, Industrial Tribunal at Ahmedabad on 30.12.1989 in Reference (ITC) No.28 of 1984 (Annexure 'G'). By an amendment, it was further prayed to modify the award at Annexure 'G' in terms of the settlement (Annexure 'I' Colly) or to dispose of this petition in terms of the settlement at Annexure 'I'.

2. Special Civil Application No. 1404 of 1987 is preferred by Gujarat Mineral Development Corporation Employees Union (hereinafter referred to as the trade Union) against the Corporation interalia praying for a writ of mandamus or any other appropriate writ, direction or order directing the Corporation to pay House Rent Allowance as well as Project Allowance to all the daily-rated employees on the same basis as is being paid to the monthly rated employees. The petitioner trade Union has further prayed to declare the exclusion clause in the definition of term 'employee' in Rule 3(k) of the Service Rules as illegal, arbitrary, discriminatory, opposed to the public policy, ultra vires, illegal and in violation of section 23 of the Contract Act and non-est in the eye of law. The trade Union has also prayed to direct the respondent Corporation to absorb the daily rated employees and to pay them salary and allowance on the same basis as are being paid to the monthly rated employees. Another prayer made in the petition is for a direction to the Corporation to regularise the pay and allowance of the daily-rated employees on the basis as are being paid to the monthly rated employees from the initial entry/appointment of the daily rated employees in the service of the respondent Corporation and to pay them arrears of difference in salary and all other consequential benefits with 18% interest.

3. On behalf of the trade Union, it is contended that the daily rated employees employed by the Corporation are treated differently, and, therefore, for the enforcement of their constitutional rights guaranteed under Article 14 and 21 of the Constitution of India, the petition is filed. On behalf of the Corporation affidavits are filed in detail justifying its action. The Corporation has contended that it is following the procedure laid down under law and have committed no breach of any provision of law at any time, and as per the settlement entered into with other trade Unions having majority of workmen, the benefits available on account of settlement are being extended to all the workmen. There is a reference of the same in the award. During the pendency of the petition, there was a further settlement, and, therefore, in the petition, prayer is made to modify the award in terms of the settlement. It was further contended that under the Industrial law, the Forum was approached and after adjudicating the disputes ultimately award is drawn. In view of this, the petition filed by Union should be dismissed.

4. Mr. Vakil, learned advocate appearing for the petitioner, trade Union, contended that the settlement is not binding to the members of the Union. He further submitted that the members of the petitioner trade Union are working with the Corporation on daily wages since number of years at different projects undertaken by the Corporation. It is contended that the mines wherein the members of the trade Union are working are situated in tribal areas. The daily rated workmen are absolutely illiterate, uneducated and are from downtrodden and weaker sections of the Society. It is contended that as the workmen belong to Class-IV, it is bounden duty of the respondent Corporation to pay the same salary which is being paid to the regular Class IV workmen of the Corporation who are monthly rated. It is further contended by Mr. Vakil that the consistent practice followed by the Corporation shows that even the employees whose service conditions are governed by the Industrial Employment (Standing Orders) Act, 1986 are being paid allowances such as H.R.A. and Project Allowance. In paragraph 7 of the petition, it is further contended that the Standing Order set out the following six categories of workmen:

1. Permanent Workmen
2. Probationers
3. Temporary workmen
4. Casual workmen
5. Substitute or Badli workmen

6. Apprentice or Trainees

4.1 Workmen other than casual workmen are sub-classified as follows:

1. Monthly rated monthly paid workmen
2. Daily rated weekly paid workmen
3. Daily rated daily paid workmen
4. Piece-rated weekly paid workmen
5. Piece-rated monthly paid workmen

5. It is contended that the Standing Order covers the service conditions of monthly rated employees as well as daily rated employees. Service Rules framed in exercise of the powers conferred by the Articles of Association and thus the same is contractual in nature and character. It is contended that employees as defined are entitled to benefit under the service rules and they cannot be excluded. The said exclusion clause results into gross discrimination.

6. It is contended by Mr. Vakil that trade Union which is of majority of workmen contracting on behalf of the workmen cannot contract when a workman himself cannot have waived fundamental rights. This submission is based on the decision of the Apex Court in the case of BASHESHAR NATH vs. I.T. COMMR reported in AIR 1959 SC 149. It is contended by Mr. Vakil that if individually each workman would have agreed, even then the same would have been in breach of the fundamental right. It cannot be said that the same have been contracted in accordance with law. Mr. Vakil further submitted that looking to the fact that other workmen similarly situated are being paid house rent allowance and project allowance, there is no earthly reason as to why daily rated workman should not be extended the said benefit.

7. As against this, on behalf of the respondent Corporation, Mr. Patel learned advocate has pointed out from the affidavit of C.J. Pandya, Personnel Officer of the Corporation that the petitioner Union has already resorted to the machinery under the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act) by raising Industrial Disputes for payment of Project Allowance, H.R.A. medical scheme etc. The Charter of Demand dated 15.12.1985 raising 59 different demands including H.R.A., and Project Allowance, ultimately culminated in Failure Report by Conciliation Officer on 21.1.1987. It is submitted that the membership of the petitioner trade Union consists of only 10% of the workmen. 87% of the daily rated workmen of the

Corporation and 90% of the monthly rated workmen are the members of Gujarat Rajya Khanij Karmachari Sangh (hereinafter referred to as the Sangh). The said Sangh submitted a charter of demand dated 24.12.1985 raising in all 48 demands including H.R.A., Medical scheme, leave encashment. One of the demands was for revision of wages. Settlement was arrived at with recognised Union in respect of monthly rated workmen and daily rated workmen. There are different settlements for different projects and Mines though the benefits extended are identical. There are in all 9 settlements which were valid upto 31.12.1989, in respect of daily rated workers outside the conciliation proceedings and the same are registered as required by section 2(p) of the ID Act read with relevant rules.

8. On behalf of the Corporation, it is pointed out that the daily rated workmen are unskilled "labourers" or "Miners" or "Helpers". It is further pointed out that out of 2301 daily rated workers only 81 were either skilled or semi-skilled workmen. Out of this 81, only 7 workers were doing work which is same or similar to that performed by the monthly rated employees. It is pointed out in the affidavit that as on the date of swearing the affidavit, there was not a single daily rated workmen in any of the project of the Corporation in the semi-skilled or skilled category or any other category doing work similar or same as performed by the monthly rated employees. It is pointed out that the daily rated helpers and miners are engaged in the work of excavating minerals. There is not a single monthly rated helper or miner carrying out similar work, that is of excavating mineral or digging the mines and hence there is no question of comparison. It is submitted that in this view of the matter, the contention raised by Mr. Vakil that there must be "equal-pay-for-equal-work" cannot be accepted.

9. It is further submitted that attempt to compare the work of daily rated labourers and miners with that of sweepers, peons and watchmen and the like is untenable. It is pointed out that persons working in the category such as Sweepers, watchmen and peons are on the regularly sanctioned post created by the Board of Directors and are drawing salary in the pay scale fixed from time to time. Duties and functions are quite different. There is vast difference so far as the quality and nature of work is concerned. Degree of liability in both the categories cannot be compared. So far as Class IV employees are concerned, working such as sweepers, peons and watchmen and the like categories are on sanctioned post,

recruitment of which is through regular selection procedure. Persons selected have to apply and have to go through a test taken by the selection committee or appointing authority whereas the daily rated workers require no qualification. Persons working on the sanctioned post have minimum qualification and their services are transferable. So far as daily rated labourers are concerned, they are not subject to transfer. In the affidavit it is pointed out that there is age limit, minimum qualification and other requirements insofar as peons, watchmen and sweepers and like categories are concerned. For daily unskilled labourer, there is no such limit.

10. In the instant case, it is further pointed out that Mines are situated in very interior part of the State and tribal areas where people would not like to come for work whereas the daily labourers belong to the same area and they are not required to migrate for work. Persons coming from other areas are required to be offered attractions by way of HRA and Project allowance.

11. At pages 193 and 194, categories of employees are indicated with the pay scales. It is pointed out that the names of 7 daily rated workers who are working as pump operators, watchmen and sweeper are given at page 228 Annexure V. It is submitted that out of these 7 persons, 3 persons are working as Pump operators, three as Watchman and one as sweeper and all these seven persons are working at Lignite Project, Rajpardi. It is further pointed out that there are 7 projects of the Corporation; Out of 2301 daily rated workers, 2212 are unskilled, 71 are semi-skilled and 10 are skilled workers. It is further pointed out in the affidavit in paragraph 6 that the daily rated labourers or miners who are large in number, and their pay packet is not less than others. It is submitted that the total pay packet of a peon, a sweeper or a watchman is less than the daily rated workmen. Example is quoted to indicate this at page 413. It is further pointed out that daily rated labourers are not working for the whole day. They complete their work of minimum quota in 3 to 4 hours and go away for agricultural work or other work for earning. Working more than quota results in further pay. They are not required to work on full time basis. It is further pointed out that in view of the settlement, they are also getting incentives. They are not required to work for a specific period but as quantity of work is fixed, they are required to complete the quota of the work and therefore many times they become free and engage in other jobs and they are earning more than a watchman, a peon or

a sweeper. Thus others, though are required to have minimum qualification and are selected after passing the test, do not always necessarily draw more than the daily rated workman.

12. It is contended by Mr. Patel that the daily rated workmen are not on sanctioned post and therefore they cannot claim benefit but at the most they are entitled to get minimum wages, and in that view of the matter also, there is no question of discrimination.

13. Mr. Vakil submitted that as pointed out by the Apex Court in the case of RANDHIR SINGH vs. UNION OF INDIA reported in AIR 1982 SC 879, equal pay for equal work should be properly applied to cases of unequal scales of pay based on no classification or irrational classification. The Apex Court has pointed out in paragraph 6 as under:

> "We concede that equation of posts and equation of pay are matters primarily for the Executive Government or expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments."

14. In the instant case, the daily rated workmen though working at seven different sites cannot be compared with other Class IV category employees where nature of work, quality of work, reliability of the work etc. are quite different. As indicated above, Class IV employees are to be appointed by inviting applications and have to pass through a test. Minimum qualification is essential and they are transferable. These aspects are important aspects to be kept in mind to decide whether the persons are similarly situated or not. Daily rated workmen in the instant case are not selected after a test and are not required to have minimum qualification. Their functions and duties are not comparable. There is no question of transfer. They are not required to work for a period for which others are required to work.

15. Mr. Vakil pressed into service another decision of the Supreme Court in the case of DHIRENDRA CHAMOLI vs. STATE OF U.P. reported in (1986) 1 SCC 637 in support of his contention that the principle of equal pay for equal

work must be made applicable in the instant case also. In that case, the persons were engaged by Government in different Nehru Yuvak Kendras in the country performing the same duties as performed by regular Class IV employees against sanctioned posts. In the instant case, we find from the record that the duties performed by Class IV employees such as Peons drivers and sweepers are quite different than the duties performed by unskilled labourers or miners. Therefore, this case is of no assistance to Mr. Vakil.

16. Mr. Vakil drew our attention to a reported decision in the case of M/S. MACKINNON MACKENZIE & CO. LTD. vs. AUDREY D'COSTA reported in AIR 1987 SC 1281. In our opinion, the decision in question is of no assistance to Mr. Vakil. In that case, the case of Stenographer of either sex performing the same work or of similar nature were paid different salary due to settlement between the Company and the Union. The Court pointed out that the claim of equality should not be denied on trivial grounds. One has to look at the duties actually performed. In making comparison the authorities should look at the duties performed generally by men and women. That was a case of sex discrimination where men and women doing similar kind of work were paid differently. In paragraph 7 of the judgment, the Court pointed out that:

> " .... Where, however, both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus a woman who works days cannot claim equality with a man on higher basic rate for working nights if in fact there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed the shifts."

17. In the instant case, there is no question of similarity of work or timings and there is no question of sex discrimination, and, therefore, this decision is of no assistance to Mr. Vakil.

18. Mr. Vakil also placed reliance on the decision in the case of BHAGWAN DASS vs. STATE OF HARYANA reported in AIR 1987 SC 2049 and submitted that equal pay cannot be denied on the ground that the mode of recruitment was different. In the instant case, there is no question of mode of recruitment so far as daily rated labourers are concerned. In the aforesaid case, the

Court has pointed out that if the persons are discharging similar work, then merely because mode of recruitment is different, it should not come in the way of getting equal pay. In the facts of this case, this decision is of no assistant to Mr. Vakil.

19. Mr. Vakil drew our attention to another decision of the Supreme Court in the case of DAILY R.C. LABOUR, P & T DEPTT., vs. UNION OF INDIA reported in AIR 1987 SC 2342 and submitted that there is hostile discrimination. In that case, casual labourers were rendering the same kind of services which were being rendered by regular employees doing the same type of work. In the facts of the present case, that is not the situation, and, therefore, this decision is of no assistant to Mr. Vakil.

20. Mr. Patel, learned advocate appearing for the Corporation submitted that the petitioner has not placed the relevant decision before the Court. Mr. Patel submitted that even if temporary daily rated employees were doing similar work, they were held not entitled to the same benefits which were being extended to the regular employees. The Apex Court, in the case of GHAZIABAD DEVELOPMENT AUTHORITY vs. VIKRAM CHAUDHARY reported in (1995) 5 SCC 210, in paragraph 8, has pointed out as under:-

> "Since they are temporary daily wage employees, so long as there is no regular posts available for appointment, the question of making pay on a par with the regular employees does not arise. But the appellant should necessarily and by implication, pay the minimum wages prescribed under the statute, if any, or the prevailing wages as available in the locality".

21. From the decision sited by Mr. Patel it appears that the daily wagers, in the absence of posts although performing duties like that of regular Class IV employees, are not entitled to regularisation. They are not entitled to parity in pay with regular employees.

22. The Apex Court in the case of STATE OF UP AND OTHERS vs. U.P. MADHYAMIK SHIKSHA PARISHAD SHRAMIK SANGH & ANR. reported in (1996) 7 SCC 34 pointed out that :-

> "Unless the posts are created they are not entitled to be fitted into any regular posts. The performance of the manual duty may be like

the duty of regular Class IV employees. However, they are not entitled for the payment of equal wages so long as there are no posts created in that behalf. We can understand that if there are vacant posts available in Class IV and they are filled up by appointing them to these posts on daily wages performing the same duties of regular employees perhaps there may be justification for issuing directions for regularisation of their services according to rules and payment of salary to the post to which they are fitted. But in view of the fact that no posts are created or existing, we cannot uphold the direction issued by the High Court to pay equal wages or to regularise their services."

23. Mr. Patel, learned advocate submitted that in the instant case, in view of the fact that unskilled daily rated labourers not discharging similar duties as that of Class IV are not entitled to claim any benefit except the wages under the Minimum Wages Act. Mr. Patel submitted that they are paid much more than the Minimum Wages Act.

24. Mr. Patel submitted that the submission made by learned advocate Mr. Vakil with regard to equal pay for equal work is without any merit in the instant case. Relying on the decision of the Apex Court in the case of STATE OF HARYANA vs. KASMER SINGH reported in (1996) 11 SCC 77, Mr. Patel submitted that the Apex Court held in paragraph 10 as under:

"10. The respondents, therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular services of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfil the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the services to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, therefore, be equated with regular workmen for the purposes for their wages.

Nor can they claim the minimum of the regular pay scale of the regularly employed".

25. Mr. Patel submitted that considering the aforesaid decision of the Apex Court and the facts of the present case, it is very clear that the Union cannot rely on the principle of equal pay for equal work.

26. In view of the principles laid down by the Apex Court in the case of STATE OF HARYANA vs. JASMER SINGH (supra), this Court is unable to agree with the submissions made by learned advocate Mr. Vakil insofar as it relates to the breach of the principle of equal pay for equal work in the facts of the present case or the breach committed by the Corporation insofar as the provisions contained in Article 14 of the Constitution of India are concerned.

27. As indicated earlier, it is very clear that majority of the workman working as daily rated labourers through their Sangh entered into various agreement to solve their labour disputes. They entered into agreements, and therefore, it cannot be said that any dispute survives now.

28. One has to remember that this is a matter governed by the provisions contained in the Industrial law and the ID Act. How a settlement is to be considered is an important aspect to be borne in mind. When there is a settlement arrived at between the management and a recognised union having majority of the workmen, and if the settlement is just, fair and binding, whether interference by the Court is called for or not is required to be considered.

29. It is required to be noted that a settlement in the course of collective bargaining is entitled to due consideration. As pointed out by the Apex Court in the case of HERBETSONS LIMITED vs. WORKMEN reported in AIR 1977 SC 322, the justness and fairness of a settlement has to be consider in the light of the conditions that were in force at the time of the reference. So far as the parties are concerned, there will always be uncertainty with regard to the result of the litigation in a court proceedings. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of general peace and well being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the award is concerned, it cannot be said that the

settlement as a whole is unfair and unjust.

30. In the above case (HERBETSONS), the Court further pointed out that a settlement cannot be judged on the touchstone of the principles applicable in adjudicating disputes by the Tribunal.

31. The Apex Court further pointed out that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and other bad. Unless it can be demonstrated that the objectionable portion is such that it completely out weighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

32. Mr. Patel, learned advocate submitted that merely because 10% of the workmen are not agreeable the settlement does not seize to be just and fair. He relied on the decision of the Apex Court in the case of M/S. TATA ENGG. & LOCOMOTIVE vs. THEIR WORKMEN reported in AIR 1981 SC 2163. The Apex Court, in paragraph 6 pointed out as under:-

> " ... If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because a small number of workers (in this case 71, i.e. 11.18 per cent) were not parties to it or refused to accept it, or because the Tribunal was of the opinion that the workers deserved marginally higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis or principles different from those which come into play when an industrial dispute is under adjudication."

32.1 In this paragraph, the Apex Court has also referred to the judgment in the case of HERBETSONS, which we have referred hereinabove.

33. In the instant case, as majority of the workman, i.e. more than 90% of the daily rated workmen, have signed the settlement, in our opinion, the same must be accepted and it cannot be said that there is any dispute pending to be decided now by the Court till the settlement is in force.

34. Mr. Vakil, learned advocate submitted that in the case of the Corporation itself, (G.M.D.C. vs. PRESIDING OFFICER reported in 27(1) (1986(1) GLR 410), a Division Bench of this Court had an occasion to consider the question of House Rent and Project Allowance. The Court confirmed the award of Project Allowance but as regards the HRA arrears awarded by the Labour Court in the Recovery Applications to the concerned employees under Rule 43 of the Rules was quashed and set aside and the Recovery Applications were remanded to the Labour Court for fresh calculations, with a direction to the Labour Court to recompute the awardable house rent allowance to the concerned employee keeping in mind rule 43 of the Rules. In view of this finding recorded by this Court, Mr. Vakil submitted that it is not open for the Corporation now to say that daily rated workman are not entitled to House Rent Allowance or Project Allowance.

35. In that case 835 workers engaged by the Corporation working as Miners and the rest doing miscellaneous work concerned with two projects moved separate applications under section 33 (C)(2) of the ID Act before the Labour Court at Ahmedabad against the Corporation. From the facts narrated in one of the Recovery Applications it transpires that the workman was serving as permanent light vehicle driver for a long time. He was getting the benefit of all the leave, casual leave, dearness allowance etc. and was paid monthly wages calculated at the rate of daily wages. He was not paid House Rent Allowance and Project Allowance as paid to other employees of the Corporation. It was pleaded that the Corporation has not made the petitioner workman as a regular workmen and there were subsisting agreements between Shree Ambaji Multi metal Project Employees' Union and the Gujarat Mineral Development Corporation Employees Union dated 25.5.1979, 26.5.1979, 3.8.1981 and 13.8.1981 respectively. On appreciating evidence, the Labour Court passed a common order in the Recovery Applications observing that the main contention of the appellant is that the applicants have not been made regular workmen and therefore, they were not entitled to receive either project allowance or house rent allowance for the period in question because according to the Corporation, the cases of these workmen were not covered by any settlement entitling them to the benefits of such allowances. The Labour Court, on examination of evidence and the submissions made by the counsel appearing for the parties concerned, interpreted service rules with reference to Rule 2 (KH) of Gujarati

version read with service rule No. 44(3) and held that daily rated workers who had completed service of 240 days are entitled to the house rent allowance and project allowance. It is against this award made under an application under section 33(C)(2) of the ID Act that petition under Article 227 of the Constitution came to be filed before this Court. The Division Bench discussed in detail the service rules 43 and 44 and the Standing Order, and pointed out as under in paragraph 23 of the judgment:

"Consequently, on a plain construction of the various clauses employed in Rule 3(k), the construction canvassed by Mr. Bhatt appears to be the only plausible and possible construction and it yields the result to the effect that these workmen whose service conditions are governed by the Standing Order would be excluded from the definition of the term 'employee' as mentioned in Rule 3(k) of the Service Rules."

35.1 Before the Court, on behalf of the workmen, emphasis was placed on the Gujarati version of the Rules. The Division Bench reproduced the Gujarati version in the judgment and after considering the same, the Court pointed out in paragraph 24 (pg. 435) of the judgment that:

" ... It must be held that even according to the Gujarati version of rule 3 (k) the employees whose service conditions are governed by the Industrial Employment (Standing Orders) Act, 1946 are sought to be excluded from the definition of the term "employee".

35.2 The Division Bench considered the pleadings in paragraph 8 of the judgment. The concerned workmen staked their claim for project allowance and HRA on the basis of the rules, policies, settlements and conditions of service as applicable to them. The Court pointed out that in the Written Statement there was not even a whisper that the service rules do not apply to the respondent workmen who were applicants before the labour Court and the main defence put forward to defeat the claim of the workman was that they were working as daily rated workman and therefore they were not entitled to any relief from the court in the proceedings under sec. 33(C)(2) and that they were not made regular workmen, they were not entitled to project allowance or house rent allowance for the period they were covered by the concerned settlement. Save and except these twin

defence, no other defence was at all invoked by the Corporation. The Division Bench pointed out the scope of interference under a petition under Article 227 of the Constitution of India in paragraph 9 of the judgment. At page 422, the Division Bench quoted the following passage from the judgment in the case of Mohd. Yunus vs. Mohd. Mustaquim AIR 1984 SC 38:

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The Supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Art. 227, the High Court does not act as an appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

35.3 In paragraph 25 of the judgment in the case of GMDC, (supra) the Division Bench held as under:

"Hence no error of law, much less any patent error of law, is detected in the decision of the trial court in extending to them the benefits of Rules 43 and 44 of the Service Rules, and in culling out the existing right for these employees to award them house rent allowance and project allowance under these rules. This inclusion of ours would, therefore, put an end to the main contention canvassed by Mr. Bhatt for the petitioner."

35.4 Again, it is required to be noted that the Labour Court was called upon to decide the application under section 33 (C)(2) of the ID Act. It was pointed out before the Division Bench that the service rules do not apply to the respondent workmen, the settlement do not cover their claims and hence there is no question of subsisting rights to claim project allowance or HRA. The Division Bench in paragraph 23 accepted the contention that the workmen whose service conditions are governed by the Standing orders would get excluded from the definition of 'employee' under section 3(k) of the service Rules.

36. It is required to be noted that under the ID Act, the settlements and awards are binding to the persons as provided for in section 18 of the ID Act. Section 19 of the ID Act refers to the period of operation of settlements and awards. The scheme of section 19 appears to be that the settlements and awards shall be binding to the parties as per the memorandum of settlement. The date of operation and the period till which the settlement shall continue to bind on the parties is indicated in section 19. Therefore, when there is a settlement for a limited period, the same shall bind the parties for that limited period. The benefit if any is claimed can be only for the period to which the parties have agreed to abide by the terms of settlement. There is a procedure for raising a demand after the period of settlement is over. An individual demand can always be raised on completion of the period of settlement but during operation or continuance of the settlements, the parties are bound by the settlement. In the instant case, after the settlements or the subsisting agreements, there are further agreements, and, therefore, the parties to the agreements would be governed by the agreement in force at the relevant time.

37. Mr. Patel, learned advocate submitted that in the instant case, the Tribunal has committed grave error by entertaining the Reference. He submitted that when the award was in force, it was not competent for the Tribunal to proceed with the reference because on the date, nothing was required to be decided as no dispute was pending. In paragraph 9 of the Award, the Tribunal has observed:-

> "In the present case prima facie it appears that the date on which the present reference has been made the settlement was in force."

In paragraph 11, the Tribunal has stated that:

> "As far as the preliminary contention of Shri Sheth is concerned, though it is true that the demand made was made before the expiry of the settlement, I do not think that the Tribunals should be so strict in adjudication of such clauses which would adversely affect the rights of the down trodden."

37.1 In the same paragraph, the Tribunal further observed that:

> "It is at the same time true that if the demand

made herein is granted, the Corporation will have to bear some extra financial burden and prima facie it would also be against clauses 6 wherein it was agreed to between the parties not to raise any demand for increase in wages or emoluments, in any form which may involve the financial burden. On this question, I am of the view that though the financial burden of the Corporation may increase it would not be either fair or just not to consider the demand of the workmen to be made monthly rated even after working for 15 to 20 years continuously and being deprived of the benefits which are made available to their counterparts."

37.2 Thus, the Tribunal itself found that the settlements were in existence at the time of Reference as well as at the time of adjudication. It is under these circumstances that a contention is raised that there was no earthly reason for the Tribunal to decide the disputes on merits. The Tribunal ought to have disposed of the Reference as being incompetent or premature. Clauses 5 and 6 of the settlement, on which reliance is placed, are as under:-

"5. The rest of the demands made by the Union in connection with the present dispute is to be treated as withdrawn and if any disputes regarding demand of the workmen are pending before conciliation/tribunals will be withdrawn by the Union and the same will not be raised till the settlement is in force.

6. Neither the Union on behalf of the workers nor the workers working on daily rated basis will raise any demand for increase in wages or emoluments in any form or kind involving financial burden to the Corporation till December 1984, except individual dispute".

38. The settlement dated 16.9.86 under section 2.P of the Act was to continue upto 31.12.1989 as contended by learned advocate Mr. Patel. When the settlement was in force, demand ought not to have been raised. Mr. Patel invited our attention to a reported decision of the Apex Court in the case of SHUKLA MANSETA INDUSTRIES v. THE WORKMEN reported in AIR 1977 SC 2246. The Apex Court held that Section 19 (2) does not entitle a party to a settlement to repudiate the settlement while the same is in operation. In the case of LIC vs. D.J. BAHADUR AND OTHERS reported in 1981 (1) LLJ 1, the Apex Court held

that the award or settlement under the ID Act replaces the earlier contract of service and is given plenary effect, as between the parties and that settlement under the ID Act does not suffer death merely because of the notice issued under S. 19 (2). In that case, the Apex Court further observed that :

> "once the earlier contract is extinguished and fresh conditions of services are created by the award or the settlement, the inevitable consequence is that even though the period of operation and the span of binding force expires, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award takes its place. If notice had not been given the door for raising an industrial dispute and fresh conditions of service would not have been legally open."

39. The Apex Court, in the case of MANAGEMENT OF BANGALORE WOLLEN & COTTON MILLS vs WORKMEN reported in AIR 1968 SC 585 held that when a previous award is still binding, the points settled in that award cannot be considered in a fresh reference.

40. In the case of RG OIL MILLS vs. L.A. TRIBUNAL reported in AIR 1964 SC 567, the Apex Court observed that though the powers of "industrial tribunal" are wide, while adjudicating upon industrial disputes, it cannot arrogate to itself powers which the legislature alone can confer or do something which the legislature has not permitted to be done.

41. It was submitted that in view of this position, it was not open for the Tribunal to make an award when the parties were bound by the agreement. Section 19 (2) of the ID Act makes it clear that settlements shall be binding for such period as is agreed upon by the parties, and if there is no period mentioned in the agreement, for a period of six months from the date on which the settlement is signed by the parties. With regard to the period of operation of the settlement, section 19 (2) thus confers a statutory continuity of the settlement even after expiry of the period agreed upon until expiry of two months from the date on which the intention of terminating the settlement is given by one party to the other. Therefore, it is submitted that when the period is fixed in the settlement, the settlement remains in

operation for the entire period and also thereafter until one month or the other party's written intimation of the intention to terminate the aware and until expiry of two months from the date of such intimation.

42. In the instant case, what we find is that the parties have entered into agreements, copies of which are placed on record. One of the agreements which are at Annexure I Collectively between the employer and the Sangh (Boxite Project at Bhuj) reveals that the agreement was executed on 16.9.1986 under section 2 (p) of the ID Act and the same was in force till 31.12.1989. After discussions on several occasions, parties have entered into an agreement declaring certain benefits such as salary, medical reimbursement, leave, sick leave, casual leave, earned leave and other leaves, cycle loan, washing allowance, education allowance, festival allowance, working hours, production, period of operation of agrement, manner of arrears to be paid and other aspects are also reflected in the agreement. The agreement clearly refers to the proceedings pending in the High Court and particularly Spl. C.A. No. 1404/87. It is specifically mentioned that Union shall withdraw the proceedings or shall request the Court to make award in terms of the settlement. With regard to Spl. C.A. No. 3631/90, it is also specifically mentioned therein that request shall be made to dispose of the proceedings in terms of the settlement.

43. Similar agreements for the Projects of the Corporation at Kadipani Mines, Boxite Project, Bhatiya, Multimetal Project, Ambaji, Project at Panendra, Kutch, Lignite Project at Panendra, GMDC Karmachari Sangh represent daily rated workmen at Panendra, Kutch, Raj Pardi, Raj Pardi Mines are placed on record, requesting the Court that the award may be modified in terms of the agreement.

44. It is well known that under the Industrial Disputes Act, the parties are entering into an agreement under section 2.P of the Act for a period which might have been mentioned in the agreement and if the period is mentioned, then the parties would bind themselves to act according to the terms of the agreement for a limited period as mentioned. After the expiry of the said period, the contract is extinguished. It is open for the parties to enter into agreement for further period. It depends on the bargaining factor and both sides will consider their own interest and will arrive at a binding decision.

45. Mr. Vakil's contention with regarding to the finding of this Court in the case of GMDC (supra) is required to be applied in the case of the petitioners, cannot be accepted. The finding recorded by the Division Bench was on the basis of the application under section 33(C)(2) of the ID Act. Section 33(C) is in the form of execution proceedings. It is settled legal position that the proceedings under section 33(C)(2) are in the nature of execution proceedings. The Apex Court in the case of MUNICIPAL CORPORATION OF DELHI vs. GANESH RAZAK reported in (1995) 1 SCC 325 has pointed out that under section 33(C)(2) the Labour Court cannot adjudicate dispute of entitlement or basis of claim of workman. It can only interpret the award or settlement on which the claim is based. Its jurisdiction is like that of an executing court. The Court considered the Constitution Bench's decision in CENTRAL BANK OF INDIA VS. P.S. RAJAGOPALAN reported in AIR 1964 SC 743 wherein the Apex Court held as under:

> "Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, ofcourse, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

46. In the decision of the Apex Court in the case of GANESH RAZAK (Supra), the Apex Court also considered the case of BOMBAY GAS CO. LTD. vs. GOPAL BHIVA reported in AIR 1964 SC 752, wherein the Apex Court pointed out that proceedings contemplated by section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is

based. It is obvious that the power of the executing Court is only to implement the adjudication already made by a decree and not to adjudicate a disputed claim which required adjudication for its enforcement in the form of decree.

47. In the decision of the Apex Court in the case of GANESH RAZAK (Supra), the Apex Court also considered the case of CHIEF MINING ENGINEER, EAST INDIA COAL CO. LTD. vs. RAMESWAR reported in AIR 1968 SC 218. The Court considered in detail sections 10(1), 33-C, and 33-C(2) and held as under at page 144:

> "It is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer".

48. In the decision of the Apex Court in the case of GANESH RAZAK, the Apex Court also considered the decision in the case of CENTRAL INLAND WATER TRANSPORT CORPN. LTD. vs. WORKMEN reported in (1974) 4 SCC 696 where the Court again pointed out that the proceedings under section 33(C)(2) are in the nature of execution proceedings.

49. Thus, only when the entitlement has been earlier adjudicated or recognised and thereafter for the purpose implementation or enforcement thereof in case of some ambiguity which requires interpretation thereof, is treated as incidental to the Labour Court's power under section 33-C(2) like that of executing court's power to interpret the decree for the purpose of its execution.

50. In our opinion, therefore, when the Labour Court has decided the application under section 33(C)(2) of the Act, it has not adjudicated the dispute raised between the parties. The settlements which were in existence have been interpreted by the Labour Court. In our view, the High Court did not interfere with the findings under Article 227 of the Constitution of India in the case of GMDC Supra.

51. Since after the decision of the Division Bench in the case of GMDC (supra) there are further settlements between the parties, the parties would be governed by the subsequent settlements, and therefore, it is not possible to accept the contentions raised by Mr. Vakil that HRA and Project Allowance must be given in view of the

decision of the Division Bench in the case of GMDC (supra) to all irrespective of facts that the proceedings initiated earlier were u/s 33 (C) (2) of the I.D. Act for granting certain benefits under settlements and that there were further settlements for different periods.

52. So far as industrial dispute is concerned, the Apex Court has pointed out that the dispute must be raised by sufficient number of workman so as to say that the cause of the workmen is exposed. In the case of STATE OF PUNJAB vs. GONDHARA TRANSPORT reported in AIR 1975 SC 531, out of 60 workmen employed in the Company, only 18 workmen sponsored the cause of the dismissed and retrenched workmen and these 18 included thirteen dismissed workers of the Company, the Apex Court held that exposing of the cause of the workmen was only by five workmen who were, at the relevant time actually in the employment of the Company, i.e. the proportion was five to sixty. The Court held that such an expousal could not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute, and hence there is no industrial dispute and the reference is incompetent.

53. Thus, considering the decisions, it is very clear that for industrial peace the agreement arrived at between the employer and the majority of the workmen must be given importance and cannot be brushed aside merely because the minority Union is not in agreement.

54. In the result, the award stands modified in terms of the settlement, and for the reasons aforesaid, Special Civil Application No. 3631 of 1990 is allowed accordingly. Rule made absolute. Special Civil Application No. 1404/87 stands dismissed with no order as to costs. Rule is discharged.

(D.M. DHARMADHIKARI, C.J.)

csm./ (B.C. PATEL, J.)